

LUCAS COUNTY COMMON PLEAS COURT

CORNER ADAMS & ERIE STREETS
TOLEDO, OHIO 43604

**SUMMONS
CIVIL ACTION**

FILING TYPE:

OTHER TORT

ALLSTATE VEHICLE AND PROPERTY
INSURANCE COMPANY
2775 SANDERS ROAD
NORTHBROOK, IL 60062

G-4801-CI-0201701589-000
JUDGE: IAN B ENGLISH

You have the right to seek legal counsel. If you cannot afford a lawyer, you may contact the Legal Services of Northwest Ohio. If you do not qualify for services by the Legal Services of Northwest Ohio and do not know an attorney you may contact the Toledo Bar Association's Lawyer Referral Service (419) 242-2000.

You have been named as a defendant in a Complaint filed in this Court by the plaintiff named below. A copy of the Complaint is attached to this Summons.

You are hereby summoned and required to serve upon the plaintiff's attorney, or upon the plaintiff, if he has no attorney of record, a copy of an answer to the complaint, within twenty-eight (28) days after you receive this Summons, exclusive of the of the day of service or to an amended complaint within the remaining response time to the complaint or 14 days, whichever period may be longer. Your answer must be filed with the Clerk of Court of Common Pleas within three (3) days after the service of a copy of the Answer on the plaintiff's attorney.

If you fail to serve and file your Answer, judgment by default will be rendered against you for the relief demanded in the Complaint.

PLAINTIFF (S)

TOM MAVIS
6041 VAN WORMER DRIVE
TOLEDO, OH 43612

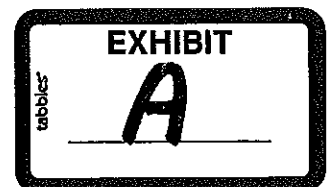
ATTORNEY FOR PLAINTIFF(S)

ROBERT A RUTTER
ONE SUMMIT OFFICE PARK
4700 ROCKSIDE RD STE 650
CLEVELAND, OH 44131

BERNIE QUILTER
CLERK OF COURTS

Date: February 15, 2017

 , Clerk





**IF YOU DO NOT HIRE AN ATTORNEY
PLEASE READ & RESPOND**
(mark one & respond)

☐

I request to be notified by email

My email address _____

Send email to: Lwatt@co.lucas.oh.us
Subject: G-4801-CI-0201701589-000
ALLSTATE VEHICLE AND
PROPERTY INSURANCE COMPANY
Message: Your email address

OR

☐

I request to be notified by regular mail
(Clerk will forward to Court for approval)

My mailing address _____

Return this Form with your address to:
Clerk of Court
Lucas County Common Pleas Court
700 Adams
Toledo, OH 43604

**If you do NOT hire an attorney & fail to respond
you will NOT receive notification of events related to this case**

Case Information is available Online at:
www.co.lucas.oh.us/Clerk
click on the "Dockets Online" link

Local Rule 5.05 H. SERVICE BY CLERK'S OFFICE Once journalized, the Clerk of courts Office will transmit the entries to the email address submitted by the parties. Counsel for a party or Pro Se litigant representing themselves who do not have an email address may, by motion, request ordinary mail service of entries by the Clerk of Courts Office.

**LUCAS COUNTY COMMON PLEAS COURT
CASE DESIGNATION**

TO: **Bernie Quilter, Clerk of Courts**CASE NO **G-4801-CI-0201701589-000**JUDGE **Judge
IAN B. ENGLISH**

The following type of case is being filed:

- Professional Malpractice**
☐ Legal Malpractice (L)
☐ Medical Malpractice (M)
☐ **Product Liability (B)**
☒ **Other Tort (C)**

- Workers' Compensation**
☐ State Funded (D)
☐ Self Insured (K)

☐ **Administrative Appeal (F)**☐ **Commercial Docket**

By submitting the complaint, with the signature of the Attorney, the Attorney affirms that the name of person with settlement authority and his/her direct phone number will be provided upon request to a party or counsel in this matter

- Other Civil**
☐ Consumer Fraud (N) ☐ Forfeiture
☐ Appropriation (P) ☐ Court Ordered
☐ Other Civil (H) ☐ Certificate of Title
☐ Copyright Infringement (W)

This case was previously dismissed pursuant to CIVIL RULE 41 and is to be assigned to Judge _____, the original Judge at the time of dismissal. The previously filed case number was CI _____.

This case is a Declaratory Judgment case with a personal injury or related case currently pending. The pending case number is _____, assigned to Judge _____.

This case is to be reviewed for consolidation in accordance with Local Rule 5.02 as a companion or related case. This designation sheet will be sent by the Clerk of Courts to the newly assigned Judge for review with the Judge who has the companion or related case with the lowest case number. The Judge who would receive the consolidated case may accept or deny consolidation of the case. Both Judges will sign this designation sheet to indicate the action taken. If the Judge with the lowest case number agrees to accept, the reassignment of the case by the Administration Judge shall be processed. If there is a disagreement between the Judges regarding consolidation, the matter may be referred to the Administrative Judge.

Related/companion case number _____ Assigned Judge _____

| | | | |
|--------------------|------------|--------------------|------------|
| Approve/Deny _____ | Date _____ | Approve/Deny _____ | Date _____ |
|--------------------|------------|--------------------|------------|

| | |
|------------------|--------------------------------------|
| Attorney | <u>Robert A. Rutter (0081503)</u> |
| Address | <u>4700 Rockside Road, Suite 650</u> |
| | <u>Cleveland, Ohio 44131</u> |
| Telephone | <u>216-642-1425</u> |

ORIGINAL

IN THE COURT OF COMMON PLEAS
LUCAS COUNTY, OHIO

FILED

LUCAS COUNTY

TOM MAVIS
6041 Van Wormer Drive
Toledo, Ohio 43612

and

CAROL E. VIOLA
6041 Van Wormer Drive
Toledo, Ohio 43612

Plaintiffs

vs.

ALLSTATE VEHICLE AND PROPERTY
INSURANCE COMPANY
2775 Sanders Road
Northbrook, Illinois 60062

and

HUNTINGTON NATIONAL BANK
P. O. Box 718
Amelia, Ohio 45102

Defendants

CASE NO.

2017 FEB 14 P 3:05

JUDGE

COMMON PLEAS COURT
BERNIE QUILTER
CLERK OF COURTS

COMPLAINT

(Jury Demand Endorsed Hereon)

G-4801-CI-0201701589-000
Judge
IAN B. ENGLISH

THE PARTIES

1. Plaintiffs owned a house located at 6041 Van Wormer Dr., Toledo ("the Property").
2. Defendant Allstate Vehicle and Property Insurance Company ("Allstate") insured the house and contents under policy number 000992465641 ("the Policy"). The declarations pages of the policy are attached as Exhibit 1.

3. Defendant Huntington National Bank ("Huntington") is named as a mortgagee on the Policy. The Policy provides that "A covered loss shall be payable to any mortgagee named in the Policy Declarations, to the extent of their interests and in the order of precedence."

4. The Policy covers, via the primary policy form the interest of Huntington, as mortgagee, even if Allstate denies the named insured's claim:

Our Duties

a. We will:

- (1) protect the mortgagee's interests in a covered building structure in the event of increase in hazard, intentional or criminal acts of, or directed by, an insured person, failure by any insured person to take all reasonable steps to save and preserve property after a loss, a change in ownership, or foreclosure if the mortgagee has no knowledge of these conditions; and
- (2) give the mortgagee 10 day notice before cancelling or non-renewing this policy.

b. Mortgagee's Duties

The mortgagee will:

- (1) furnish proof of loss within 60 days if the insured person fails to do so;
- (2) pay upon demand any premium due if the insured person fails to do so;
- (3) notify us of any foreclosure, change of ownership or occupancy or any increase in hazard within 30 days of obtaining knowledge of any of these conditions;
- (4) give us the right of recovery against any party liable for loss; but giving us this right will not impair the right of the mortgagee to recover the full amount of the mortgagee's claim; and
- (5) after a loss, permit us to satisfy the mortgagee requirement and receive full transfer of the mortgage.

5. As such, Huntington has a financial interest in the dwelling proceeds paid by Allstate in the event the plaintiffs are determined to have coverage, and is a necessary party to

this lawsuit. Huntington also has an independent claim for the amount of the dwelling loss up to the amount of the mortgage as of the day of loss that it must assert via a cross claim.

THE INSURANCE CLAIM

6. On March 12, 2016, while the Policy was in force, a fire occurred at the garage on the Property causing severe damage to the garage and its contents.

7. Plaintiffs promptly reported the loss to Allstate, which commenced an investigation into the cause and origin of the fire and the amount of damage.

8. Plaintiffs cooperated with the claim investigation and appeared for examinations under oath. Plaintiffs also submitted a proof of loss and voluminous documents that were requested by Allstate.

9. The Policy provides that any "suit or claim for loss must be brought within one year after the loss or damage occurs."

10. On January 31, 2017 Allstate denied the claim, claiming the insureds misrepresented material facts.

FIRST CAUSE OF ACTION (Breach of Contract Against Allstate)

11. Plaintiffs incorporate by reference the above allegations.

12. Plaintiffs had a contract with Allstate on the day the loss occurred.

13. Allstate breached the insurance contract by failing to pay to plaintiffs the amount due under the insurance policy.

14. As a direct and proximate cause of Allstate's breach of the insurance contract, plaintiffs have been denied the policy benefits due them under the contract in an amount in excess of \$100,000.

15. As a further direct and proximate cause of Allstate's breach of the insurance contract, plaintiffs have suffered other reasonably contemplated damages.

16. Plaintiffs pray for judgment on this count in an amount in excess of \$25,000, the exact amount to be determined by a jury at the trial of this matter, plus attorney fees, interest, and costs as allowed by law.

**SECOND CAUSE OF ACTION
(Lack of Good Faith Against Allstate)**

17. Plaintiffs incorporate by reference the above allegations.

18. In adjusting plaintiffs' claim, Allstate, through its agents, adjusters, and investigators, acted unreasonably, without reasonable justification, fraudulently, intentionally, recklessly, and not in good faith.

19. Allstate, through its adjusters, agents, and investigators, acted intentionally, willfully, wantonly and with actual malice in refusing to pay plaintiff's claim, in investigating the claim, and in delaying such payments. Among other actions, Allstate:

- failed to conduct an adequate investigation;
- failed to conduct thorough and well-documented interviews of witnesses;
- misconstrued and misstated the information obtained from witnesses;
- conducted a biased investigation;
- failed to retain competent, qualified, and unbiased experts;
- failed to reasonably evaluate the competing expert opinions;
- relied on experts whose opinions were patently flawed;
- failed to interview Plaintiffs' bankruptcy attorney;
- insulted its insured with such an accusation;
- damaged its insured's reputation with unfounded accusations;

- did not render a coverage decision in a reasonable period of time, especially in view of the fact that the policy contains a one-year suit-filing provision;
- failed to follow standard claim investigation guidelines and keep plaintiffs and his counsel advised as to the claim investigation and the reason it took so long;
- placed its interests before those of its insured;
- misinterpreted the insurance policy for its own advantage;

20. The actions and omissions of Allstate demonstrate malice, aggravated or egregious fraud, oppression, or insult and Allstate, as principal or master of its agents and adjusters, authorized, participated in, and ratified the actions or omissions of its agents and adjusters in this regard.

21. As a direct and proximate cause of Allstate's lack of good faith, plaintiffs have suffered emotional distress and anxiety, inconvenience, increased loss of use, economic harm, and have incurred litigation expenses and attorney's fees.

22. Plaintiffs pray for judgment on this count in an amount in excess of \$25,000 in compensatory damages and an amount in excess of \$25,000 in punitive damages, the exact amount to be determined at trial, plus interest, costs, and attorney's fees as allowed by law.

THIRD CAUSE OF ACTION
(Declaratory Judgment Against Allstate and Huntington)


23. Plaintiffs incorporate by reference the above allegations.
24. Plaintiffs have a written contract with Allstate.
25. Allstate has denied plaintiffs' insurance.
26. Pursuant to R.C. §2721.03 and R.C. §2721.04, plaintiffs are entitled to a declaratory judgment from this court construing the Policy and the terms, limitations, and conditions contained in the Policy. Specifically, plaintiffs are entitled to a declaration as to

whether, based on the policy language, this is a covered claim, whether Allstate was allowed by the contract language to refuse to pay plaintiffs' additional living expenses during the time the claim was being investigated, whether Allstate is obligated to pay Huntington regardless of its claim decision with respect to plaintiffs' claim, whether Allstate is entitled to take an assignment of the mortgage, whether Allstate is obligated to appraise the amount of the loss pursuant to the Policy's Appraisal condition, and how any payment by Allstate to Huntington will effect the relationship and financial obligations between plaintiffs and Huntington.

27. Plaintiffs request this Court to resolve these disputes between the parties by issuing a declaration of rights to the extent permitted by Ohio law. The plaintiffs further pray for any further relief the Court deems proper, including but not limited to, an award of attorney fees, interest, and costs, as well as judgment against the defendants as specified above.

WHEREFORE, plaintiffs pray for judgment against Allstate as set forth above, plus interest, costs, and attorney fees as allowed by law, and such other relief as the Court, in the exercise of its equitable jurisdiction, deems proper.

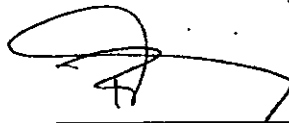
Respectfully submitted,



Robert A. Rutter (0081503)
Justin Rudin (0087368)
RUTTER & RUSSIN, LLC
One Summit Office Park, Suite 650
4700 Rockside Road
Cleveland, Ohio 44131
(216) 642-1425
bobbyrutter@OhioInsuranceLawyer.com
jrudin@OhioInsuranceLawyer.com

JURY DEMAND

Plaintiffs hereby request, pursuant to Civil Rule 38(B), a trial by jury of the issues of the
within lawsuit.

A handwritten signature in black ink, appearing to read 'R. Rutter', is written over a horizontal line.

ROBERT A. RUTTER
Attorney for Plaintiffs

House & Home Policy Declarations

Your policy effective date is March 9, 2016

**Allstate.**
You're in good hands.

Page 1 of 4

Total Premium for the Policy Period

| | |
|------------------------------|-----------------|
| Premium for property insured | \$316.96 |
| Total | \$316.96 |

Discounts (included in your total premium)

| | | | |
|-------------------------------|-----------------|-----------------|----------|
| Protective Device | \$9.59 | Multiple Policy | \$108.61 |
| Claim Free | \$47.94 | Early Signing | \$28.15 |
| Responsible Payment | \$113.54 | Welcome | \$29.27 |
| Total discount savings | \$337.10 | | |

Insured property details*

Please review and verify the information regarding your insured property. Please refer to the Important Notice (X73182) for additional coverage information. Contact us if you have any changes.

Location of property insured: 6041 Van Wormer Dr, Toledo, OH 43612-4042

Dwelling Style:

Built in 1973; 1 family; 1032 sq. ft.; 1 story

Foundation:

100% Basement (0% finished)

Detached structure:

One 3-car detached garage

Interior details:

One average kitchen
One average full bath

One average half bath

Exterior wall type:

100% brick on frame

Interior wall partition:

100% drywall

Heating and cooling:

Average cost heat & central air conditioning, 100%

Additional details:

Interior wall height - less than 10 ft, 100%

Fire protection details:

2 miles to fire department

Information as of March 16, 2016

Summary

Named Insured(s)
Tom Mavis and Carol E Viola

Mailing address
6041 Van Wormer Dr
Toledo OH 43612-4042

Policy number
992 465 641

Your policy provided by
Allstate Vehicle and Property
Insurance Company

Policy period

Beginning **March 9, 2016** through **March 9, 2017** at 12:01 a.m. standard time

Your Allstate agency is

The Rudolph Ins Agy
1125 Georgesville Rd
Columbus OH 43228
(614) 330-2787
MRUDOLPH4@ALLSTATE.COM

Some or all of the information on your Policy Declarations is used in the rating of your policy or it could affect your eligibility for certain coverages. Please notify us immediately if you believe that any information on your Policy Declarations is incorrect. We will make corrections once you have notified us, and any resulting rate adjustments, will be made only for the current policy period or for future policy periods. Please also notify us immediately if you believe any coverages are not listed or are inaccurately listed.

(continued)

EXHIBIT

1

House & Home Policy Declarations

Policy number: **992 465 641**
 Policy effective date: March 9, 2016
 Your Allstate agency is The Rudolph Ins Agy
 (614) 330-2787

Insured property details* (continued)

Roof surface material type:

Composition

- 100% asphalt / fiberglass shingle

Roof details:

Predominant roof type: Composition Age of roof - 6 years
 Roof geometry - Gable

Mortgagee

THE HUNTINGTON NATL BK ISAOA ATIMA
 P O Box 718, Amelia, OH 45102-0718
 Loan number **Account**

Additional Interested Party - None

*This is a partial list of property details. If the interior of your property includes custom construction, finishes, buildup, specialties or systems, please contact your Allstate representative for a complete description of additional property details.

Coverage detail for the property insured

| Coverage | Limits of Liability | Applicable Deductible(s) |
|----------------------------------------|----------------------------------------|--------------------------------------------------------------------------------------------------------------------|
| Dwelling Protection | \$160,766 | <ul style="list-style-type: none"> • \$1,000 Windstorm and Hail • \$1,000 All other perils |
| Other Structures Protection | \$104,498 | <ul style="list-style-type: none"> • \$1,000 Windstorm and Hail • \$1,000 All other perils |
| Personal Property Protection | \$64,307 | <ul style="list-style-type: none"> • \$1,000 Windstorm and Hail • \$1,000 All other perils |
| Additional Living Expense | Up to 24 months not to exceed \$16,077 | |
| Family Liability Protection | \$100,000 each occurrence | |
| Guest Medical Protection | \$1,000 each person | |
| Water Back-Up | Not purchased* | |
| Additional Fire Department Charges | Not purchased* | |
| Building Codes | Not purchased* | |
| Building Materials Theft | Not purchased* | |
| Building Structure Reimbursement | Not purchased* | |
| Extended Limits | | |
| Dwelling in the Course of Construction | Not purchased* | |
| Electronic Data Recovery | Not purchased* | |
| Extended Coverage on Cameras | Not purchased* | |

(continued)

House & Home Policy Declarations

Policy number: **992 465 641**
 Policy effective date: March 9, 2016
 Your Allstate agency is The Rudolph Ins Agcy
 (614) 330-2787



Allstate.
 You're in good hands.

Page 3 of 4

| Coverage | Limits of Liability | Applicable Deductible(s) |
|------------------------------------------------|---------------------|--------------------------|
| Extended Coverage on Jewelry, Watches and Furs | Not purchased* | |
| Extended Coverage on Musical Instruments | Not purchased* | |
| Extended Coverage on Sports Equipment | Not purchased* | |
| Extended Premises | Not purchased* | |
| Fair Rental Income | Not purchased* | |
| Golf Cart | Not purchased* | |
| Green Improvement | Not purchased* | |
| Home Day Care | Not purchased* | |
| Identity Theft Expenses | Not purchased* | |
| Increased Coverage on Business Property | Not purchased* | |
| Increased Coverage on Theft of Silverware | Not purchased* | |
| Loss Assessments | Not purchased* | |
| Mine Subsidence | Not purchased* | |
| Roof Surfaces Extended Coverage | Included | |
| Secondary Residence | Not purchased* | |
| Select Value | Not purchased* | |
| Yard and Garden | Not purchased* | |

* This coverage can provide you with valuable protection. To help you stay current with your insurance needs, contact your agent to discuss available coverage options and other products and services that can help protect you.

Scheduled Personal Property Coverage

Your policy does not include Scheduled Personal Property Coverage. This coverage can provide you with valuable protection. To help you stay current with your insurance needs, contact your agent to discuss available coverage options and other products and services that can help protect you.

Your policy documents

Your House & Home policy consists of the Policy Declarations, any Policy Declarations Addendum, and the following documents. Please keep them together.

- House & Home Policy - AVP81
- Windstorm and Hail Deductible Endorsement - AVP82
- Roof Surfaces Extended Coverage Endorsement - AVP42
- Ohio Amendatory Endorsement - AVP103-2



House & Home Policy Declarations

Page 4 of 4

Policy number: **992 465 641**
Policy effective date: March 9, 2016
Your Allstate agency is The Rudolph Ins Agy
(614) 330-2787

Important payment and coverage information

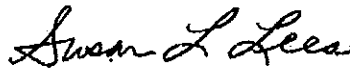
Here is some additional, helpful information related to your coverage and paying your bill:

- ▶ The Property Insurance Adjustment condition applies.
- ▶ Do not pay. Mortgagee has been billed.

Allstate Vehicle and Property Insurance Company's Secretary and President have signed this policy with legal authority at Northbrook, Illinois.



Steven P. Sorenson
President



Susan L. Lees
Secretary

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1: Article Addressed to:

ALLSTATE VEHICLE AND PROPERTY
INSURANCE COMPANY
G-4801-CI-0201701589-000 #8
2775 SANDERS ROAD
NORTHBROOK, IL 60062



9590 9402 2488 6306 1324 34

2: Article Number (Transfer from service label)

7016 3010 0000 4264 1214

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by **Pamela Williams**

C. Date of Delivery

Employee of Allstate

D. Is delivery address different from item 1? ☐ Yes

If YES, delivery address below:

FEB 21 2017

Pamela Williams

3. Service Type

☐ Adult Signature

☐ Adult Signature Restricted Delivery

☒ Certified Mail®

☐ Certified Mail Restricted Delivery

☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

☐ Insured Mail

over \$500:

☐ Priority Mail Express®

☐ Registered Mail™

☐ Registered Mail Restricted Delivery

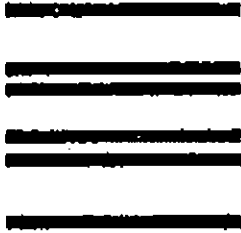
☐ Return Receipt for Merchandise

☐ Signature Confirmation™

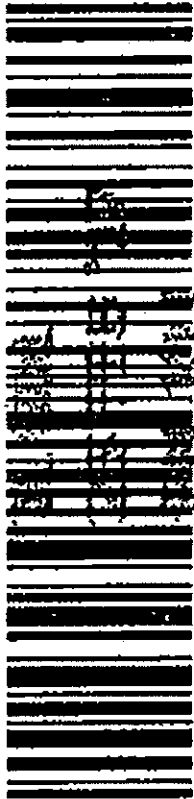
☐ Signature Confirmation Restricted Delivery

☐ Restricted Delivery

Domestic Return Receipt



USPS TRACKING#



9598 9482 2480 6306 1324 34

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

United States
Postal Service

FILED

MAR 01 2017

Sender: Please print your name, address, and ZIP+4® in this box*

Bernie Quilter
Lucas County Clerk of Courts
700 Adams St.
Toledo, Ohio 43604

Lucas Co. Com. Pleas Ct
Bernie Quilter, Clerk

